IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Second Appeal No. 839 of 2001
(Old No. 151 of 1988)

Hasin Ahmad S/o Julfkar Ahmad
Owner Fire, Hasan Ahmad Naj Pan Waley
Awam, Hasan Ahmad Hasan Pan Waley pan Bikrets
Mal Road, Almora ...Appellant

Vs

Union of India through its
General Manager
N.E. Railway gorakhpur ...Respondent

Hon'ble B.C. Kandpal, J.

This second appeal has been filed by the appellant-Hasin Ahmad against the judgment and decree dated 09.10.1987 passed by District Judge, Almora in Civil Appeal No. 10 of 1987 Hasin Ahmad Vs Union of India arising out of judgment and decree dated 19.02.1987 passed by Munsif, Almora.

2. Brief facts of the case are that the appellant filed a suit before the court of Munsif, Almora alleging therein that he is the wholesale dealer of betel leaves under the name and style *'Hasan Ahmad Naz Pan Wale & Hasan Ahmad Husain Pan Wale'.* The betel leaves were booked from the number of places after payment of fare in advance to the Railways for delivery of betel leaves to the plaintiff/appellant at Almora. The appellant further stated that it was the duty of the defendant/railways to deliver the goods to the plaintiff/appellant as per the booking, but these goods were not delivered to him on account of negligence on the part of the defendant/railways. Thereafter, necessary notices under Section 78-B of Indian Railways Act and Section 80 of C.P.C. were issued and served upon the defendant. The plaintiff

further stated that the prices of the said goods have not been paid to the plaintiff.

3. The Railways contested the suit and filed objections alleging therein that the goods were not booked by the plaintiff. He was neither consignee nor the consigner of the said goods and as such he was not entitled to file the suit. It was also pleaded by the defendant/railways that the aforesaid notices were not served upon him.

4. On the basis of the pleadings of both the parties, following issues were framed by the trial court:-

1. Whether the plaintiff is entitled to get the damages on the allegations of plaintiff?
2. Whether the suit is for not giving notice under section 78-B of Indian Railways Act or Section 80 of C.P.C. If so its effect?
3. Whether the suit is bad for non joinder of necessary parties?
4. Whether the suit is not maintainable as alleged in paras 11 and 12 of the written statement?
5. To what relief, if any, is the plaintiff entitled?

5. The trial court after having perused the entire material available on record and after hearing the learned counsel for the parties reached to the conclusion that the plaintiff/appellant has failed in establishing the service of necessary notices and accordingly the suit was dismissed vide judgment and decree dated 19.02.1987.

6. Feeling aggrieved by the aforesaid judgment and decree, the plaintiff/appellant preferred an appeal before the

court of District Judge, Almora. The appellate court after having heard learned counsel for the parties and perusing the record considered the following two points for determination:-

1. Whether the plaintiff is entitled to maintain the suit and to recover the price of the betel leaves mentioned in para 30 of the plaint?
2. Whether the suit is not maintainable for want of notices under Section 78-B of Indian Railways Act and Section 80 of C.P.C.?

7. On the above two points, the appellate court has recorded the finding that the plaintiff/appellant has stated nowhere as to how he became the owner of the goods nor any such case has been taken by him in the plaint. The appellate court further recorded a finding that the consignee could file the suit only if they proved their title to the goods in transit where the consigner and consignee are different. The consignees are not necessary the owner of the goods merely because they hold the railway receipts and the plaintiff filed copies of certain notices which were served upon the defendant but in his statement he failed to connect these notices. There is also no evidence on record which may reveal that the original notices were sent through the postal receipts on record. Accordingly, the appellate court dismissed the appeal with costs vide judgment and decree dated 09.10.1987.

8. Feeling aggrieved by the aforesaid judgments and decrees passed by the courts below, this second appeal has been filed by the plaintiff/appellant before the Allahabad High Court, which has been transferred to this Court after creation of new State.

9. Heard Sri B.S. Adhikari, learned counsel for the appellant, Sri V.K. Bist, learned Senior Advocate assisted by Smt. Seema Serohi learned counsel for the respondent and perused the record.

10. I do not find any ground for interference in the concurrent findings of fact recorded by the courts below. It is well settled law that how so erroneous may be the findings of fact, the same cannot be interfered with in the second appeal. Moreover, no substantial question of law is involved in this case.

11. The appeal lacks merit and is liable to be dismissed.

12. Accordingly, the second appeal is dismissed inlimine. No order as to costs.

(B.C. Kandpal, J.)

11.09.2006
ASWAL